

PT 01-14

Tax Type: Property Tax

Issue: Grounds for Burying the Dead

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**CONCORDIA
CEMETARY ASSOCIATION,
D/B/A
CONCORDIA CEMETARY,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 00-PT-0001
(98-16-10824)**

P.I.N: 15-13-100-014

**Alan I. Marcus
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Kurt Heerwagen of Boeger, Heerwagen, Lustoff & Brendemuhl on behalf of the Concordia Cemetery Association d/b/a Concordia Cemetery (hereinafter the “applicant”).

SYNOPSIS: This matter comes to be considered pursuant to applicant’s motion for summary judgment. Applicant filed this motion after the Illinois Department Of Revenue (hereinafter the “Department”) issued a determination in this matter on November 12, 1999. Said determination found that real estate identified by Cook County Parcel Index Number 15-13-100-014 (hereinafter the “subject property”), was not in exempt use, and therefore did not qualify for exemption from 1998 real estate taxes under Section 15-45 of the Property Tax Code, 35 ILCS 200/1-1, *et seq.* (hereinafter the “Code”). At issue herein is whether the subject property was “used exclusively as

graveyards or grounds for burying the dead,” as required by Section 15-45 of the Code during the 1998 assessment year.

The controversy arises as follows:

Applicant filed a Real Estate Exemption with the Cook County Board of Review (hereinafter the "Board") on March 23, 1999. The Board reviewed applicant's complaint and subsequently recommended to the Department that the requested exemption be granted. The Department then issued its determination in this matter, finding that the subject property was not in exempt use, on November 12, 1999. Applicant filed a timely appeal to this denial but then filed this motion for summary judgment. Following a careful review of that motion and its supporting documentation, I recommend that the Department's initial determination in this matter be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the determination issued by the Office of Local Government Services on November 12, 1999. Administrative Notice.
2. The Department's position in this matter is that the subject property is not in exempt use. *Id.*
3. The Application for Property Tax Exemption, filed with the Department on July 22, 1999, indicates that the subject property is located at 7900 Madison Street, Forest Park, IL 60130.
4. The affidavit of applicant's manager, Gary Neubiser, which applicant offered in support of its motion for summary judgment, indicates that the subject property:
(1) is located in the middle of applicant's cemetery; (2) represents less than 2% of

- the total acreage of the cemetery; and, (3) was improved with a greenhouse that was demolished in 1997; (4) has been vacant and unimproved since the greenhouse was demolished; and, (5) was in fact vacant and unimproved throughout the 1998 assessment year.
5. Mr. Neubiser's affidavit further indicates that: (1) applicant originally used the greenhouse to grow plants for its own use; (2) applicant decided to stop growing its own plants sometime in 1974; (3) applicant leased the greenhouse to an Amling's flower shop between 1974 and 1997; and, (4) the subject property was tax exempt while applicant was using the greenhouse to grow plants for its own use but taxable while it was leased to Amling's.
 6. Records of the Cook County Assessor, which applicant offered in support of its motion for summary judgment establish that all portions of applicant's cemetery, except for the subject property, were tax exempt throughout the 1998 assessment year.

CONCLUSIONS OF LAW:

Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). There are no contested facts in this case. Therefore, the issue for decision herein necessarily becomes one of law. Evangelical Alliance Mission v. Department of Revenue, 164 Ill. App.3d 431, 439 (2nd Dist. 1987). That issue is, precisely stated, whether the subject property was "used exclusively as graveyards or grounds for burying the dead," during the 1998 assessment year.

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to its Constitutional mandate, the General Assembly enacted Section 15-45 of the Property Tax Code (35 ILCS 200/1-1 *et seq*), wherein "[a]ll property used exclusively as graveyards or grounds for burying the dead" is exempted from real estate taxation. Section 15-45 and all other statutes exempting property from taxation are to be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Accordingly, applicant bears the burden of proving by clear and convincing evidence that the property it is seeking to exempt falls within the appropriate statutory provision. Metropolitan Sanitary District of Greater Chicago v. Rosewell, 133 Ill. App.3d 153 (1st Dist. 1985).

Section 15-45 requires applicant to prove that the subject property was plotted for, and actually used as, a graveyard during the tax year in question. Rosehill Cemetery Company v. Kern, 147 Ill. 483 (1893) (tract plotted for burials but not actually used for internment of the dead during tax year in question held non-exempt).¹ Here, the subject property was completely vacant, and therefore not actually used for internment purposes, during 1998. Accordingly, pursuant to Rosehill Cemetery Company, I conclude that said property was not in exempt use throughout that tax year as a matter of law.

This conclusion defeats applicant's primary argument for exempt use, which is that the subject property is "reasonably necessary" to facilitate its use of other parts of the cemetery that are tax exempt. Applicant's argument assumes that applicant was actually using the subject property in some specifically identifiable manner that would facilitate

1. *Accord*, Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was completely vacant throughout the tax year in question held non-exempt).

its exempt use of those areas. *See, Memorial Child Care v. Department of Revenue*, 238 Ill. App. 3d 985, 987 (4th Dist. 1992) (day care center that limited its enrollment strictly to children of employees who worked at a charitable hospital and its affiliated corporations held exempt); *Evangelical Hospital Ass'n. v. Novak*, 125 Ill. App.3d 439 (2nd Dist. 1984) (property used for no purpose other than providing centralized administrative services to five charitable hospitals held exempt); *Evangelical Hospitals Corp. v. Illinois Department Of Revenue*, 223 Ill. App.3d 225, 231 (2nd Dist. 1992) (part of office building actually used to provide administrative services for charitable hospitals held exempt).

Applicant was not actually using the subject property for *any* purpose during 1998. Hence, it was factually and legally impossible for said property to facilitate another exempt use in that particular tax year. Each tax year constitutes a constitutes a separate cause of action for exemption purposes. *People ex rel. Tomlin v. Illinois State Bar Ass'n*, 89 Ill. App.3d 1005, 1013 (4th Dist. 1980)). Consequently, the fact that the subject property served a tax exempt purpose in tax years other than the one currently under consideration is of no legal significance herein. *Jackson Park Yacht Club v. Department of Local Government Affairs*, 93 Ill. App.3d 542 (1st Dist. 1981); *Fairview Haven v. Department of Revenue*, 153 Ill. App.3d 763 (4th Dist. 1987).

Furthermore, whatever efforts applicant made to develop and adopt the subject property for internment purposes “must be viewed in light of the ultimate intended use.” *Lutheran Church of the Good Shepherd of Bourbonnais v. Illinois Department Of Revenue*, 316 Ill. App.3d 828, 834 (3rd Dist., October 13, 2000). Because the subject property is located in the midst of a tax-exempt cemetery, it is reasonable to assume that applicant will eventually use said property “as grounds for burying the dead,” as required by Section 15-45. However, “the mere fact that the subject property adjoins land that is tax exempt is of no significance.” *Lutheran Church of the Good Shepherd* at 833. More

importantly, applicant did not actually use the subject property for internment purposes during the tax year currently in question.

Nor did applicant make any efforts to develop the subject property for its intended use during that tax year. Such a complete absence of active use is what distinguishes this case from Lutheran Church of the Good Shepherd, *supra*, wherein the appellant church *actively* mowed and tilled the property in question, and refrained from planting crops thereon, during the relevant tax year. Lutheran Church of the Good Shepherd at 834.

The only developmental activity that this applicant undertook, namely demolishing the greenhouse, has no bearing on this case because it was undertaken during a previous tax year. People ex rel. Tomlin, *supra*; Jackson Park Yacht Club, *supra*; Fairview Haven, *supra*. Consequently, applicant is not entitled to judgment as a matter of law because it was not actually using the subject property for internment purposes, or actively developing said property therefor, during the 1998 assessment year. Accordingly, applicant's motion for summary judgment should be denied and the Department's determination in this matter should be affirmed.

WHEREFORE, for all the above-stated reasons, it is my recommendation that real estate identified by Cook County Parcel Index Number 15-13-100-014 not be exempt from 1998 real estate taxes under Section 15-45 of the Property Tax Code, 35 **ILCS** 200/1-1, *et seq.*

March 14, 2001
Date

Alan I. Marcus
Administrative Law Judge